

FACT SHEET FOR FAIR LABOR STANDARDS ACT (FLSA)

"It's not a choice. It's the law."

- Minimum wage is \$5.15, effective September 1, 1997.
- The provisions of the FLSA cover all employees including full-time, part-time, permanent, and temporary employees in the **state personnel system**.
- Covered employees include both exempt employees, (employees exempt from the minimum wage and overtime compensation provisions of the law) and **non-exempt** employees who are eligible for overtime compensation.
- For non-exempt employees, overtime exceeding **40** standard work hours per workweek **must be paid in cash or in compensatory time at time and a half rate**. (Exceptions are for 14-day work period for hospital employees, and 7(k) exemption for law enforcement employees.)
- Non-exempt employees cannot waive their right for overtime compensation (voluntarily or involuntarily).
- Compensatory time off, in lieu of cash payment, is allowed provided that agreement is reached between the employee (hired after April 15, 1986) and supervisor. Once an agreement is reached, it will stay effective until voided by both parties. This compensatory time off agreement is not needed for those non-exempt employees who were hired before April 15, 1986. If a department already had a policy of using compensatory time in lieu of cash payment before that date, FLSA allows the department to continue its policy for the employees hired before that date.
- A non-exempt employee may accumulate up to 40 hours of overtime (equivalent to 60 compensatory hours at time and a half). Any compensatory time exceeding this 60-hour limit must be paid in cash unless special approval is granted by the Executive Director of the Department of Personnel and Administration (the Director).
- Accumulated compensatory time must be taken within two months after the end of the payroll period in which the overtime was worked, or else it should be paid in cash.
- Supervisors cannot unilaterally schedule compensatory time off for their non-exempt employees without the employees' agreement. Compensatory time, like cash, is employee earnings. Supervisors should not dictate how employees should spend their earning (i.e., compensatory time). Compensatory time off may not be denied to an employee unless there is a valid business reason.

Work Weeks. An established work week of all employees shall be 168 consecutive hours beginning at and including 12:01 a.m. Saturday and ending at midnight Friday. Exceptions to this may be made on individual cases. For example, employees on a 5/4-work schedule may begin their work week at midday on the day of the week of their day off.

Work Schedule. Appointing authorities and/or supervisors have authority to schedule work hours within the assigned work week and/or work day.

Work Hours. All full-time non-exempt employees shall work 40 hours within an established work week. Overtime does not accrue until after 40 hours are worked during the established work week.

- Authorized paid and non-pay leave and holidays shall not count as time worked for purposes of determining overtime, except for essential employees designated by the Director.
- Work breaks **are not** mandatory. Work breaks up to 20 minutes are counted as hours worked. Work breaks shall not be taken at the beginning or at the end of a work day, nor shall employees use work breaks to extend their meal periods. Work breaks exceeding 20 minutes should not be counted as work time.

Overtime Work. Overtime work for non-exempt employees must be pre-approved by appointing authorities and/or supervisors. Unauthorized overtime may result in corrective actions and/or disciplinary actions against employees. Authorized or not, once overtime work is received and acknowledged, a non-exempt employee must be compensated accordingly.

Meal Periods. An uninterrupted meal period of 30 minutes or more is not hours worked. If a meal period is interrupted to the extent that a non-exempt employee is not relieved of all duties, another meal period of at least 30 minutes may be granted or the meal time is considered as work time. There is no rule requiring that supervisors must schedule a meal period for employees. Employees may work through eight hours without a meal break if approved by their supervisors.

Travel Time. Time spent in ordinary travel from home to work and back in the course of one day is not hours worked. This applies regardless of whether the employee works at a fixed location or at different job sites provided that employees are not required to work before leaving for the first job site or after the last job site. When an employee is given a special one-day assignment in another city, travel time is compensable working time.

Training Time. Time spent in **required** training programs is considered work time. Voluntarily attending non-required training courses is not work time, even if paid for by the agency.

Record keeping. Time records shall be kept for both exempt and non-exempt employees. Both the employee and the supervisor must certify the time records. There is no requirement on what format time records must be kept.

Exempt Employees. Exempt employees are paid for performing a job regardless of the number of hours worked and therefore are not paid overtime compensation for work exceeding 40 hours in a workweek. Pay reduction in a unit of quarter hours may be applied to an exempt employee without losing the exemption status, **except** when a reduction is made from an exempt employee's salary for absences caused by jury duty, attendance as a witness, or temporary military leave. Suspending exempt employees from work and from pay must be done in an increment of a work week.

FLSA Investigation Process. Employees may file a request for overtime investigation from the Director regarding (1) overtime eligibility, (2) overtime work and (3) overtime compensation.

Please contact Sue Huang at (303) 866-4219 at the Department of Personnel and Administration if you have any questions regarding any overtime related issues.

http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/toc.htm (for determining exemption status)

http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_553/toc.htm (for public sector)

http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_579/toc.htm (for child labor)

http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_785/toc.htm (for hours worked)

<http://www.dol.gov/esa/regs/compliance/whd/whdcomp.htm> (for enforcement and compliance of the law)